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ABSTRACT

Pragmatic and philosophical cases against codes of ethics for journalists and other mass media practitioners are proposed in this paper. After an examination of the First Amendment considerations related to media ethics, a distinction is made between moral philosophy and moralizing, and it is argued that most media codes tend to be moralistic in tone rather than being based on principled morality. It is next observed that developmental psychologists maintain that individuals naturally operate on narrow, pragmatic, and moralistically selfish bases only in their early stages of moral development, but that morally mature individuals and institutions evolve into independent agents. The stages and sequences of this development are traced, and the roles played by such external regulators as ethics codes during the various phases of individual development are pointed out. It is concluded that if a First Amendment function of journalists and other media practitioners is to operate as social catalysts capable of identifying the topics and expediting the negotiations societies need in order to remain dynamic, then codes of ethics may very well be dysfunctional. (HTH)

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The Case Against Mass Media Codes of Ethics

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ABSTRACT

Pragmatic and philosophical cases against codes of ethics for journalists and other mass media practititioners are proposed in this paper. The authors offer insights into First Amendment considerations and from developmental psychology in suggesting that whatever value codes may hold for media facing attacks from governmental and societal groups, those same codes present serious difficulties in inculcating substantial ethical values in individual journalists and in the profession as a whole.

Developmental psychologists, particularly Lawrence Kohlberg, maintain that it is only natural for individuals to operate on narrow, pragmatic and moralistically selfish bases in their early stages of moral development, but that morally mature individuals and institutions evolve into independent moral agents. This paper traces stages and sequences of such development, pointing out the roles played by such external regulators as ethics codes during various phases of individual development.

Distinctions between moral philosophy and moralizing are made in this paper, and it is argued that most media codes tend to be moralistic in tone rather than being based on principled morality. To that end, they impede rather than aid individual and institutional moral development. Useful as they may be in keeping neophytes out of difficulty with superiors and co-workers, they do little to help media practitioners overcome the status quo tendencies of conformist moralizers. If a First Amendment function of journalists and other media practitioners is to operate as social catalysts capable of identifying the topics and expediting the negotiations societies need in order to remain dynamic, then codes of ethics may very well be dysfunctional.

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The Case Against Mass Media Codes of Ethics

In the recently published mass communications textbook by one of this paper's authors, a lengthy section devoted to the history of various mass media codes of ethics concluded that:

> **Codes seem to have certain elements in common: They have few if any teeth; they are both unenforced and unforceable. They are incumbent upon members only, and the only sanction that can be applied against a member is expulsion from membership, sometimes a small penalty. The codes tend to be bland statements drawn up in response to public disenchantment with media operations. At best, they are a stopgap of semiserious self-regulation in the hope that somehow their platitudes will satisfy both public critics and government's temptation to regulate.**
>
> **By their existence, they are an attempt to organize, to standardize, and to codify ethics. This is a large order and, in the complexity of institutionalized mass media, comprises really only a halfway measure toward the regulation that media are trying to avoid. Codes arise in response to public demand, but they are framed to cause the least commotion.** [1]

The same argument has been heard frequently of late, a period which ironically finds journalists putting teeth in their media codes of ethics just as they are being told by their corporate attorneys that failure to adhere to internally established codes of behavior can be used against them in courts of law.

While the pragmatic arguments continue, philosophically based cases against codes of ethics can also be heard. John Merrill, for one, transcends pragmatic arguments in maintaining that codes impede libertarian and individualistic philosophy.[2] Insights from First Amendment considerations and from developmental psychology can also be utilized in suggesting that whatever values codes may hold for media, they present serious difficulties in inculcating substantial ethical values in individual journalists and in the profession as a whole. In short, our case is that codes of ethics are probably of some limited value to the neophyte media practitioner, and help assure non-journalists that the industry really is concerned about ethics, but probably should be relegated to a framed wall hanging for any journalist who has advanced beyond his/her internship.

First Amendment Considerations

In order to understand the relationship of developmental psychology to the use of ethics codes, first there must be some recognition of the role of the First Amendment in the journalist's environment.

Certainly the concept of First Amendment, with all the "rights" it bestows on the journalist to gather and distribute information, is a familiar one to us all. However, the question before us revolves around a philosophy of what the First Amendment really does for the concept of ethics.

First, it has been established by the courts that official licensing of journalists (a traditional means of enforcing skill and ethical standards in professions and trades) is prohibited by First Amendment considerations. As a practical matter, any idiot (literate or illiterate, learned or ignorant, socialized or rebellious) may practice journalism without intervention or regulation by a set of standards.

Though that may be unpleasant truth for proud American journalists, its implications are central to any discussion of journalism ethics in the United States, and, by extension, to other nations adopting a westernized, democratic media system.

The fact should be evident that the First Amendment has a primary purpose of protecting the distribution of ideas, as unpalatable as many of them may be, from restriction efforts by legions of "regulators". Ethics codes are among those "regulators".

Would it be unrealistic to suggest that the protection of such oftentimes unsavory and even downright disgusting material is not merely a protection for the distributor--as regulators of pornography tend to view the matter--but a protection for the public at large?

Therefore, a thoughtful approach to the question would suggest that the First Amendment allows the distribution of all kinds of information so the populace may have that information needed to better function as citizens and as individuals. That is, as human beings we would like to have a maximum of control over our own lives, making our own decisions to the extent it is possible, with a minimum of control and manipulation by forces outside our immediate view. Thus, as citizens, we need to have a full, free flow of information to inform us and make us better decisionmakers.

Very relevant here is recognition that the basis of a participatory democracy is emphasis on the priority rights of the **individual**. Early signals of a shift to authoritarian or dictatorial society often take the form of emphasis on the primacy of the state (or of institutions) over the individual. The First Amendment, if it works correctly, makes it difficult for such a shift to occur, for it allows dissident communicators to sound the warning.

Such a system also allows, distressingly sometimes, for a myriad of false alarms. As Mr. Justice Potter Stewart declared about the First Amendment, it doesn't guarantee the distribution of information, but adherence to its principles makes possible a free and open distribution, or warning system.

If the generalization will hold that institutions tend to regulate the behavior of their components (departments or individuals) at the expense of individualism, it must be recognized that codes of ethics have the very real possibility of regulating behavior in such ways that precious conventions protected by the First Amendment are lost.

Indeed, it is not difficult to find examples of codified professional ethics that ultimately become self-serving. That is, they tend to protect the industry, or elements of the industry, at the expense of individuals and other institutions, even of the full society.

The ethics of medical and legal professionals are recent visible examples . Ethical restrictions have traditionally tended to protect the well-established at the expense of newcomers among lawyers. Medical ethics have protected--through ethical provisions suppressing public criticism of colleagues--the entire profession from unfavorable comment that might have exposed the incompetent.

Pharmaceutical companies had for decades followed self-serving ethical proscriptions (codified into law in some states) on advertisintg of prescription medications, handicapping patients who had no means of finding the most economical product. Advertising prohibitions on lawyers and pharmaceuticals have been found by the courts to be violations of First Amendment protections guarantees to the right of the public to have decision-making information.

Returning to journalism, we note that the First Amendment--the journalist's favorite--implies a much greater freedom than many (both inside and outside the profession) are willing to admit.

If, indeed, the First Amendment anticipates a freedom of the venal as well as the virtuous to gather and distribute information of their own choosing, so long as legal boundaries are not trampled, what is the hope for journalistic ethics?

It has been suggested--and this will be discussed in some detail--that ethics codes are inadequate to do the job that needs to be done. Therefore, there must be a reliance on other factors. It is the emergence of such a recognition that has led to the current growth in exploration of journalistic ethics--and to the increased interest in ethics codes as well as the interest in more abstract looks at ethics and morality in communications.

Codes: Moral Philosophy or Mere Moralizing?

Our thesis statement that codes are likely to be more damaging than helpful to an industry such as communications or journalism can be supported by distinguishing between **MORAL PHILOSOPHY** and **MORALIZING**. The most important point to be made here is that ethical codes in the field may very well be born from immature philosophic grounds and, once employed, operate most effectively on immature philosophers.

Let us also define codes of ethics and point out major distinctions between codes that are couched in general terms and those more specific in their wording; the final section of the paper will draw from developmental psychologists in making an argument that the influence of codes is inversely proportional to levels of moral development among individuals for whom codes are penned.

Ethics can be considered as a branch of moral philosophy, or philosophical thinking about morality, moral problems and moral judgments. At the outset of any discussion of ethics, we should recognize that moral philosophy differs in a critically important way from mere moralizing.

Whereas moral philosophy consists of **"thinking about ethics,"** moralizing consists of **"just giving advice."** In thinking about ethics, we are dealing with general advice, advice that is consistent--over time, from case to case, from rule to rule, from person to person--and involves consistency between what we say and what we do. Moral philosophy also involves dialectical, analytical and cathartic thinking, talking and enacting of ethical principles. On the other hand, when we are moralizing were are just giving advice--specific, particular advice that lacks consistency over time, from case to case, etc.--and advice that has a high probability of being inconsistent between what we say and what we do.

Moralizing, in contrast with moral philosophy, tends to be dogmatic, pragmatic and advisory thinking, rather than dialectical, analytical and cathartic.

We mention this distinction for two reasons. One, so our discussion on ethics, ethics codes, and ethical violations are based on broad precepts of moral philosophy rather than the narrow precepts of moralizing; and, two, to direct attention to the real danger that codes of ethics may emerge from and apply to moralistic thinking patterns rather than intellectually mature moral philosophy.

Our thesis, then, is that ethics codes may well be founded on non-ethical bases, and thus may lead to non-ethical behavior.

What is meant by "codes of ethics"? Let us consider the definition by Earl Morander, a professor of business administration, who calls an ethical code "part of that middle ground between internalized societal values on the one hand and law on the other, where formal social and economic sanctions or a social group--a profession, an industry, a firm, etc.--act to ensure conformity with acceptable standards of behavior and penalize deviance."[3]

Ethics codes can be general or specific; general in the sense of containing general precepts to guide conduct, specific in the sense of identifying specific practices covered by the code. General precept codes tend to be, but are not exclusively, of an approbatory nature--made up of "thou shalt" provisions. The Boy Scout Oath is an example. Specific practice codes tend to be, but are not exclusively, of a proscriptive nature--made up "thou shalt not's". Most media codes are proscriptive. Specific practice codes may also include various forms of punishment for nonobservance ranging from public censure to fines and dismissal.

Codes can be written to contain both general and specific terms, as in the Ten Commandments. General statements establish the foundations for a code and give the code its bite. By means of clarification, consider the following guidelines intended to achieve truth in television advertising:

At one level we have society's values: "Do not lie; tell the truth."

At a second level we have the general precepts of an ethics code: "Our advertising will always be truthful."

At a third level are the specific practices of an ethics code: "TV commercials will use only the actual product in testing, not look-alike substitutes."

Finally, at the fourth level, the level of law, we have the statement in Section Five of the Federal Trade Commission Act: "Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are hereby declared unlawful."[4]

The strength of an ethical code is a function not only of its various canons, but of its legitimacy and power in the eyes of those for whom it is written. The code will be obeyed because individuals willingly subject themselves to ethical standards above and beyond their own personal belief or because the code had specific provisions for enforcement they feel will be involved should they violate it. Note that in the four-stage set of guidelines for bringing about truth in television, there is increasingly more reliable enforcement from stage to stage--from expressing society's values to general precepts, on to specific precepts of an ethics code, and then to the level of law. At each stage along the way punishment becomes more probable and more severe.

In terms of the codes themselves, this implies that general precept codes are generalized guides to conduct that would often have no enforcement provisions--"our advertising will always be truthful"--whereas specific practice codes would ordinarily have established mechanisms for enforcement--"Commericials will use only the actual product in testing, not look-alike substitutes."

If there is increasingly more reliable enforcement built into each successive stage of the guidelines, so naturally is there a decreasing need for individual decision-making, personal judgment, at each successive stage. The more legalistic the statement, the less judgment is needed to operate in accord with what is being defined as right, good or just.

This brings us back to the argument for the need to develop moral philosophy--particularly in the communications field--rather than drift in a sea of moralizing. For, as we have pointed out, in few, if any, other fields is there less of a formalistic chance of punishment for ethical wrongdoers than in the area of communications in the United States. Thus, every professional communicator should, ideally, become a professional philosopher in order for the mass media to develop to the functional stage described earlier.

Moral philosophy emerges when, like Socrates, we pass beyond the stage in which we are directed by traditional rules and even beyond the stage in which these rules are so internalized that we are under the illusion we are inner-directed, to the stage in which we think for ouselves in critical and general terms. . . and achieve a kind of autonomy as moral agents.

This is an autonomy we see, for reasons we have already explored, as being anticipated by development of First Amendment precepts. That is, if vital information is to be generated and distributed for the public good, individuals should not be required to be bound by the "moralizing" of others.

Codes and Moral Development

Developmental psychologists and moral philosophy students have distinguished various stages of morality, tracing them through individual as well as cultural or group life cycles. For instance, they note such distinctions as pre-rational, customary, or group morality which matures--sometimes--into personal, rational or reflective morality. Their general idea here, as William Frankena[5] sees it, is that morality begins as a set of culturally defined goals and of rules governing the achievement of these goals--goals which are largely external to the individual and

imposed on him/her or inculcated as habit. Ultimately--whenever that may be-- such goals and rules to some extent become internalized. That is, the individual takes them as his/her own and regulates personal conduct in accordance, developing a conscience or superego.

The process of internalization may be quite irrational, may differ enormously from case to case, individual to individual. But it does tend to occur as we move from a rather irrational, illusory kind of inner direction to a more rational and realistic one in which we achieve an examined life and a kind of autonomy, become moral agents on our own, and even reach a point at which we can criticize the rules and values of our society.

Developmental psychologists including Jean Piaget,[6] Erik Erikson,[7] William Perry,[8] and Lawrence Kohlberg[9] have proposed various frameworks for understanding how this process of internalization occurs. For the purposes of the present essay, insights from Kohlberg will be relied upon most heavily, but a fuller discussion of the entire process would draw as well from his fellow developmental psychologists.

Kohlberg has developed a system by which psychologists are able to understand the reasoning or structure underlying people's moral choices. By "structure" he means the types of considerations a person uses in resolving a moral problem and the principles or logic by which these considerations are tied together. Kohlberg has demonstrated that moral development in people tends to follow an invariant sequence as each individual progresses through certain stages in life. There are six stages people can move through, although many stop short of the higher stages for one reason or another.

In briefly sketching those six stages, we can consider how a journalist would likely behave at each stage along the way, and what role the ethics codes might play throughout.

FIRST STAGE: Behavior Based on Punishment

The first stage is described as "the morality of arbitrary, fixed rules, obedience to power and avoidance of punishment." Young children generally think of right and wrong in terms of getting punished for their actions. Rules are assumed as arbitrary and fixed regardless of the purposes and motives of the actor--as in "Don't ask me why; just do it because I told you so." If there is "conscience " involved, it is only the irrational fear of punishment. It is unlikely that journalists would be operating at this stage very often, but if they did their adherence to the ethics codes would have little to do with the codes, per se, and much to do with their concerns over acting so as to avoid being punished, their bosses, not their codes, would most likely be the authority figures in such a scenario.

SECOND STAGE: Behavior Based on Rewards

Second is described as "the morality of instrumental egoism and exchange." Much as in teleological egoism (in which individuals determine whether their acts are moral or immoral simply on the basis of consequences to themselves), behavior at this stage is conditioned by rewards. Judgments of what is right or wrong derive from questions over what will serve the actor's self-interests, pleasure and welfare, and, under certain conditions, the interest of others who are equal to, or like, the actors. Actions are "right" as they serve actors' interests and desires. Individuals "use" other people knowing that other people might use them, if the roles were reversed. "Empathy" is narrowly defined in the sense that the "other" is seen as similar to the "self". At this stage of moral development, laws and ethics codes are followed or broken not because they are inherently right or wrong, but because of self-serving expediencies. ("Some laws are stupid, but if you break them you might have to go to jail." That is, do your own thing, but don't get caught.)

STAGE THREE: Behavior Based on Pro-Social Motives

Kohlberg's third stage is referred to as "the morality of interpersonal concordance." Acts are defined as good and right if they are based on pro-social motives, since an overriding concern of people at this stage is an awareness of what other people must think of them, and a desire to maintain generally positive relationships among people. Warren Breed's insights into social control in the newsroom (and recent research on co-orientation) reflect journalists' awareness that being a good team player is sometimes more important than following their own good intentions. Behavior is judged as right and good on the basis of whether the act was founded on pro-social motives. Pecking orders are established, and decisions are made based on maintaining or improving one's standing in the pecking order. And, as is true of most pecking orders, people within them tend to think of each other in stereotypical terms. Reporters operating at this stage are very likely to be team players, and codes would naturally serve as documentation of team allegiances and a means of achieving team goals. To the extent that codes strive for social responsibility, they are accepted by stage three journalists insofar as the responsibility to society doesn't find itself in conflict with the thrusts for membership in the business/craft/profession of journalism in general and the specific newsroom or media firm more particularly. It would appear that abstractly phrased codes would pose no real threat to such journalists. It would also appear that First Amendment neuroses--knee-jerk appeals to legal protection for the "tribe"--would be typical of this type of journalist.

STAGE FOUR: Behavior Based on Rules, Law, Duty

At the fourth stage we find "the morality of rules [illegible]uty to the social order." For Stage 4 the "right" is defined by categorical rules, binding t[illegible]bers of society, and violation of the rules is seen as causing damage to all of society. Since a stable social order is of paramount importance at this stage, categorically and uniformly applied rules are appropriate. The society in question is much broader than the personal or tribal relationships discussed in Stage 3. At the third stage rules could be broken if done for positive prosocial reasons (note that the Watergate breakin was justified by politicians and functionaires who felt loyalty to Richard Nixon and group norms overshadowed broader social responsibilities). At the fourth stage people are concerned that society runs smoothly and chaos is avoided. Roles are played; conflicts between diverging sets of laws or ethical pressures are handled with some difficulty. A journalist at Stage 4 whose news medium has an ethics code but who individually believes the public needs to know some information available only if the code is violated is likely to engage in enormous rationalizing, but would likely come down on the side of the code and the law since they are more specific than the abstract "public interest" value of the information. The real problem at Stage 4 is not knowing how to determine when one's conscience is correct or when the cause one believes in is just. In general, however, a Stage 4 journalist willingly submits to approbatory and proscriptive codes so long as such codes consider the pro-social values called for in journalistic performance.

STAGE FIVE: Behavior Based on Social Contract, Utility

The fifth stage of moral development is known as the "morality of social contract and social utility." Here we see morality not as a means for maintaining society, but as a reflection of the very reasons we have societies in the first place--filling a supporting role for the individual. As a rule the ends do not justify any means. While circumstances justify periodic deviant acts, they do not make it right or lead to the suspension of moral categories. When they reach this stage, people recognize that the rule systems (codes, laws, what have you) mandated in earlier stages were simply one or two of many logically possible rule systems. Once they recognize this, the door is opened for the restructuring of society's rules into broader moral principles, all of them rationally devised. What would rational people conclude, and what will they accept? There must be a search for agreement not based on majority opinion, but upon lines of reasoning any logical social being could adhere to.

At this stage social institutions represent the kind of contract rational people have made with each other; institutions are relative and somewhat arbitrary, subject to change when circumstances and moods (i.e., rational moods) demand. Laws are major definers of moral obligations, as they were in Stage 4. However, before a law or code is obligatory at Stage 5 it must be consistent with individual rights and with the interests and welfare of the majority. The individual's obligation to law is part of the social contract inherent in living in society. Utilitarian arguments for codes and laws are found in Stage 5 thinking: laws and codes are there to serve the greatest good for the greatest number of people. If laws conflict with basic human rights, such as the right to live, the basic human rights will take precedence, since reasonable people cannot be expected to discard their basic rights.

It is the journalists operating in this stage who most likely will "reopen negotiations on the social contract" as they provide new information to identify changing conditions which might invalidate the current contract. The journalist's information has the ability to start the public dialogue, leading to a new contract.

The rule-bound journalists would be far less likely to place themselves in this critically important social position, in which case invalid social contracts might remain in force, creating a situation in which civil violence is seen as the only rule-changing alternative. This would occur in the absence of new rule-making social dialogue launched by journalists whose First Amendment protections make them the primary hope as social change agents.

STAGE SIX: Behavior Based on Universal Principles

Finally, some people achieve Stage 6--the stage of "the morality of universal ethical principles." The prinicples involved at this stage are the principle of justice, or equal consideration of the claims of all human beings, and the principle of respect for personality, or treating human beings as ends in themselves. (These two principles are basically equivalent because to treat each person as an end in himself/herself implies treating each person as morally equal.)

At Stage 6, people recognize there must be some moral obligations and values valid for all humanity, regardless of law and social agreement. But these moral ideals and rules may not be defined as rational moral principles except by those few persons who reach Stage 6. The Stage 6 individual is sufficiently unique to be referred to as a moral hero.

Once at Stage 6, the principles provide a general rational guide to moral decisions, a means of resolving conflicts. Like Immanuel Kant,[10] adherents of moral principles firmy believe that the categorical imperatives should be as applicable to the rest of humanity as they are for themselves. Humanistic principles reflect a sense of obligation to all human life. Conscience and principle are more to be valued than law and codes of ethics. Ultimately, moral choices that would injure the self-concept and social standings of individuals at lower stages are made by Stage 6 adherents without reference to personal and ultimately egoistic sentiments of self-blame and loss of integrity. Journalists operating at this stage would not typically be Guild or union members, would probably reject codes of ethics, and would probably find themselves moving from job to job, medium to medium, until they settle into an "ivory tower" position or one where they had "star reporter" status and could circumvent office norms--or they leeve the business altogether. One could speculate they would more likely be found among the ranks of columnists and editorial writers than among beat reporters. A further speculation is that the Stage 6 journalist is a very rare creature, indeed, as are Stage 6 individuals generally.[11]

Summary

It should be noted that ethics codes can be accepted or rejected at any stage of moral development, but the acceptance or rejection are for quite different reasons at each step along the way. While acceptance at lower stages is quite natural as journalists are learning to come to grips with personal values and are still reliant on external loci of control, acceptance or rejection of the codes by those at higher stages of development would be far more rationally, selflessly, and philosophically based.

In sum, it is natural for individuals to be operating on narrow, pragmatic and moralistically selfish bases in their early stages of develolpment. But, as we said earlier, by the time the neophyte has completed a formal education and served an internship it is time to put away the childish rules and begin to operate as a moral philosopher.

It is the moral philosopher/journalist who must rationally overcome the status quo tendencies of the conformist moralizer to become the social catalyst who identifies the topics and expedites the negotiations societies need in order to remain dynamic.

The rule-bound journalist finds it easy to justify avoidance of such activity because of socially-approved conventions, codified by "regulators."

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